

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY HANNAH,

Defendant-Appellant.

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UNPUBLISHED

January 22, 2002

No. 225869

Kent Circuit Court

LC No. 99-009671-FC

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(f). The trial court sentenced him to 22 to 50 years in prison. We affirm.

Defendant first contends that the trial court erred by failing to order a continuance after receiving notice that defendant wished to call certain witnesses not present in the courtroom. However, defendant failed to move the court for a continuance, and this Court has ruled that a trial court has no duty to grant a continuance on its own motion. *People v Kelly*, 186 Mich App 524, 527; 465 NW2d 569 (1990). Thus, absent a motion for a continuance at trial, we will not review this issue on appeal.<sup>1</sup> *Id.*

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<sup>1</sup> Defendant further implies that the court erred by failing to order the witnesses subpoenaed. “An accused in a criminal prosecution has the right to compulsory process for obtaining witnesses in his favor.” *People v Loyer*, 169 Mich App 105, 112; 425 NW2d 714 (1988). However, this right to compulsory process is not absolute, and a criminal defendant does not have the right to subpoena any and all witnesses he may wish to call. *Id.* at 112-113. Rather, the decision whether to order compulsory process rests within the discretion of the trial court. *People v Yeoman*, 218 Mich App 406, 413; 554 NW2d 577 (1996). In this case, we find no abuse of the trial court’s discretion. Indeed, defendant did not formally move the court to subpoena these witnesses at court expense but merely discussed, in the middle of trial and without moving for a continuance, his desire to have them at trial. No error occurred.

Defendant also asserts that his trial attorney rendered ineffective assistance of counsel by failing to move for a continuance to secure these witnesses and by failing to formally request subpoenas. We disagree. To establish ineffective assistance of counsel, a defendant must show that his attorney's performance was deficient under an objective standard of reasonableness and that the deficiency likely affected the outcome of the case. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *People v Snider*, 239 Mich App 393, 423-424; 608 NW2d 502 (2000). An attorney is presumed to provide effective assistance; therefore, a defendant bears a heavy burden of proving otherwise. See *Stanaway, supra* at 687. A defendant must overcome the presumption that the challenged action or omission by counsel could conceivably be considered sound trial strategy. *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001). This Court will not second-guess counsel's trial tactics. *Id.* at 386 n 7. Finally, because defendant in the instant case failed to move the court for a hearing regarding ineffective assistance of counsel, this Court's review is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Defendant has failed to meet the standard for appellate relief. Indeed, the testimony of the desired witnesses, according to defendant's representations of their expected testimony, would have been largely cumulative to defendant's testimony, would not have directly addressed the central issue of consent, and, in our opinion, would not have affected the outcome of the case. Accordingly, reversal is unwarranted. *Stanaway, supra* at 687; *Snider, supra* at 423-424.

Next, defendant argues that the trial court erred by allowing a sexual assault examiner, Nurse Elizabeth Van Strien, to testify as an expert in the field of sexual assault. We review for an abuse of discretion a trial court's determination regarding expert testimony. *People v Swartz*, 171 Mich App 364, 374; 429 NW2d 905 (1998).

MRE 702 states:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Admissibility of expert testimony under this rule is subject to a three-part test requiring that (1) the expert is qualified, (2) the evidence sought to be admitted through the expert's testimony gives the trier of fact a better understanding of the evidence or helps in determining a fact in issue, and (3) the expert's knowledge relates to a recognized discipline. *People v Parcha*, 227 Mich App 236, 239-240; 575 NW2d 316 (1997). Regarding the first prong of the test, Van Strien was experienced, with more than twenty-five years of service as an emergency room and obstetrics nurse. She had also attended a one-week seminar dealing specifically with sexual assault examinations, and she testified that she had monthly meetings where current issues and techniques in the field of sexual assault examination took place. Regarding the second prong, Van Strien's testimony was directly relevant to the issue of consent, which was the focus of the trial. Her testimony regarding the injuries she observed on the victim led to her opinion that the physical examination of the victim was consistent with the history of sexual assault the victim gave her. Regarding the third prong, we cannot characterize the field of sexual assault

examination an “unrecognized” discipline, especially considering that Van Strien received specialized training in this area. Under these circumstances, the trial court committed no abuse of discretion in its handling of Van Strien’s testimony.

Next, defendant argues that the prosecutor made improper remarks during closing argument and rebuttal that denigrated defendant and his theory of the case. Defendant failed to object to the comments, and therefore appellate review is precluded unless plain error occurred. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000). To avoid forfeiture under the plain error doctrine, three requirements must be met: 1) error must have occurred; 2) the error must have been plain, i.e. clear or obvious; and 3) the plain error must have likely affected the outcome of the case. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Here, the comments at issue related to the facts and arguments as presented by defendant, and a prosecutor is “not required to state inferences and conclusions in the blandest possible terms.” *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996). Moreover, when there is conflicting evidence and the question of a defendant’s guilt or innocence turns on which witness is to be believed, commenting on credibility is a proper area for closing argument. *People v Flanagan*, 129 Mich App 786, 796; 342 NW2d 609 (1983). In light of these principles and our review of the record, we discern no clear or obvious error with respect to the comments defendant challenges on appeal. Accordingly, reversal is unwarranted. *Carines*, *supra* at 763.

Defendant additionally contends that the prosecutor improperly vouched for the complainant’s credibility. We disagree. The comments to which defendant points did not suggest that the prosecution had any special knowledge or facts that would indicate that the victim should be believed instead of defendant. *People v Bahoda*, 448 Mich 261, 277; 531 NW2d 659 (1995). Rather, the comments, in context, merely implored the jury to judge her credibility. No error requiring reversal occurred.

Lastly, defendant argues that the trial court erred by sentencing him to 22 to 50 years in prison. We review a court’s sentencing decisions for an abuse of discretion. *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999).

Defendant contends that the trial court did not indicate sufficient reasons for the sentence imposed. However, in cases such as this, where a court sentences defendant within the guidelines and states that it is basing its sentence upon the sentencing guidelines, our Supreme Court has stated that no further articulation of reasons for the sentence imposed is needed. *People v Broden*, 428 Mich 343, 355; 408 NW2d 789 (1987).

Defendant also contends that his sentence violates the principle of proportionality. As noted above, defendant’s sentence falls within the guidelines and is therefore presumptively proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). This presumption may be overcome by showing that unusual circumstances exist that would make the sentence disproportionate to the offense or to the offender. *Id.* Defendant presents no such circumstances, and therefore we find that the sentence imposed by the trial court is proportionate. In doing so, we reject defendant’s suggestion that the statutory guidelines applicable to offenses

committed after January 1, 1999 should be considered in or applied to this case. See *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000).

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter